



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT on behalf of the Republic of Latvia Riga, 3 May 2012 in Case No. 2011-14-03

The Constitutional Court of the Republic of Latvia composed of: the chairperson of the Court Hearing Gunārs Kūtris, Justices Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to the application by Administrative District Court on initiating a case,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 3 of Section 16, Para 9 of Section 17, Section 19¹ and Section 28¹ of the Constitutional Court Law,

on 3 April 2012 examined at court hearing the case

“On Compliance of Subparagraph 3.¹ 5 and Section 11 of 13 March 2001 Cabinet of Ministers Regulation No. 120 "Regulation on Posting Residents and Funding of Residency " and Section 11 of 25 August 2009 Cabinet of Ministers Regulation No. 972 "Regulation on Posting Residents and Funding of Residency" with Article 91 and Article 106 of the Satversme of the Republic of Latvia”.

The Facts

1. On 12 June 1997 the Saeima adopted “Medical Treatment Law”. The initial wording of Section 57 of this Law provided: “The Cabinet of Ministers shall specify the procedure for distribution of residents and for financing the residency at medical treatment institutions.” On 1 June 2000 the Saeima adopted the law “Amendments to “Medical Treatment Law””, which amended Section 57 of Medical Treatment Law, deleting from the words “medical treatment institutions”.

1.1. On 13 March 2001 the Cabinet, on the basis of Section 57 of Medical Treatment Law, adopted Regulation No. 120 "Regulation on Posting Residents and Funding of Residency " (hereinafter – Regulation No. 120). This Regulation entered into force on 17 March 2001.

With the Cabinet Regulation of 8 February 2005 No. 111 “Amendments to the Cabinet Regulation of 13 March 2001 No. 120 “Regulation on Posting Residents and Funding of Residency”” sub-paragraph 3.¹⁵ was added to Regulation No. 120, providing that the Centre of Professional Medical Education “shall conclude with persons, who have been enrolled in residency according to the procedure set out in Subparagraph 3.¹³ of this Regulation, agreements, which stipulate that after completing the residency the respective persons will have their basic employment for a period of at least years, in accordance to the posting by the Centre, at state and local government medical treatment institutions, the list of which, in accordance with the needs of the specific regions, shall be approved by the Minister for Health”.

Paragraph 11 of Regulation 120, in its turn, provided: “If the resident does not abide by the terms of the agreement referred to in Subparagraph 3.¹⁵ or fails to acquire successfully the education program or discontinues residency because of reasons independent from the medical treatment institution that has the right to train or the institution of higher education, the resident has to cover the expenses linked with the residency within five years. The payments must be made every month, annually paying into the state budget one fifth of the total sum of state budget used for training.”

1.2. On 25 August 2009 the Cabinet of Ministers adopted Regulation No. 972 “Regulation on Posting Residents and Funding of Residency” (hereinafter – Regulation No. 972). This Regulation came into force on 3 September 2009.

Pursuant to Subparagraph 5.4 of this Regulation, the institutions of higher education, in order to implement residency programs, conclude agreements with persons enrolled in residency, providing that:

“5.4.1. after completing the residency, in accordance with the posting by the Ministry of Health, the respective persons will have their permanent employment for a period of at least years at state and local government medical treatment institutions, the list of which, in accordance with the needs of the specific regions, shall be approved by the Minister for Health”;

5.4.2. if the resident does not abide by the terms referred to in Subparagraph 5.4.1 or fails to master successfully the training program or discontinues residency because of reasons independent from the institution of higher education, the resident shall cover the residency related costs within five years. The payments must be made every month, annually paying into the state budget one fifth of the total sum of state budget used for training.”

With the Cabinet Regulation of 24 August 2010 No. 795 “Amendments to the Cabinet Regulation of 25 August 2009 No. 972 “Regulation on Posting of Residents and Funding Residency”” Subparagraph 5.4.1 of Regulation No. 972 was expressed as follows:

“after completing the residency the respective persons shall work for the following three years in the territory of the Republic of Latvia at a medical treatment institution, which has concluded an agreement with the Health Payment Centre on providing health care services paid for by the state or which provides health care services outside Riga.”

Para 11 of Regulation No. 972 provides: “If the resident after completing the residency does not fulfil the terms referred to in Subparagraph 5.4.1 of this Regulation or fails to master the program successfully or discontinues the residency due to reasons independent from the institution of higher education, the Ministry of Health shall adopt a decision on repayment of the state budget resources used for the training of this resident in accordance with the procedure set out in Subparagraph 5.4.2.”

1.3. On 7 September 2011 the Cabinet Regulation of 30 August 2011 No. 685 “Regulation on the Posting of Residents and Funding of Residency” (hereinafter – Regulation No. 685) came into force.

In accordance with Para 42 and Para 43 of this Regulation, to persons, who have started residency education program funded by state budget resources before the day this Regulation came into force, the previous legal regulation applies.

2. On 9 September 2003 the State Agency for Compulsory Health Insurance (hereinafter – SACHI) and Jekaterina Vasiljeva concluded an agreement No. 0900/RA-4/2003, in accordance with which J.Vasiljeva undertook five years of residency studies, as well as to have her basic employment at an institution of medical treatment according to the posting for three years, or, failing to do so, to cover within the period of five years the expenditure linked to the residency, making the payments every month and within a year paying into the state budget one-fifth of the total sum of state budget resources used for education. SACHI, in its turn, pursuant to the aforementioned agreement, undertook to pay for J.Vasiljeva's training in residency.

On 18 August 2008 the Minister for Health Ivars Eglītis issued Order No. 143 “On the List of Institutions of Medical Treatment”, approving the list of those institutions of medical treatment, where the persons, who have graduated from the residency training programmes, funded by state budget resources, in 2008, should be permanently employed .

J. Vasiljeva completed residency studies in 2008. On 11 May 2009, following a prolonged correspondence with J. Vasiljeva, the Centre of Professional Medical Education adopted decision No.1-9/1 “On Repayment of Funding Received from the State Budget”, obliging J.Vasiljeva to come to the Centre by 29 May 2009 to conclude an agreement on debt repayment and start repaying the funding received from the state budget.

J. Vasiljeva requested revoking of the decision of 11 May 2009 by the Centre of Professional Medical Education No. 1-9/1. On 20 November 2009 the Ministry of Health with the Order No. V-01-20fiz.13/1615 rejected J.Vasiljeva's request and obliged her to arrive no later than by 23 December 2009 at the Ministry of Health to conclude an agreement on debt repayment.

3. The Applicant – the Administrative District Court – asks the Constitutional Court to assess the compliance of the Subparagraph 3.¹5 And Para 11 of Regulation No. 120, as well as Para 11 of Regulation 972 (hereinafter – the

contested norms) with Article 91 and Article 106 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Administrative District Court (hereinafter also – the Applicant) is reviewing case No. A42854609, in which, inter alia, J.Vasiljeva's request to revoke the Decision of 10 November 2009 by the Ministry of Health No. V-01-20fiz.13/1615 is examined. On 20 June 2011 the Administrative District Court decided to submit an application to the Constitutional Court, as well as to suspend the legal proceedings in the administrative case until the day when the ruling of the Constitutional Court comes into force.

3.1. The Applicant holds that the contested norms do not comply with the first sentence of Article 91 of the Satversme. The Applicant holds the opinion that the residents, whose training expenses are covered from the state budget resources, and the students of any other institution of higher education, whose studies are paid for by the state budget resources, are in equal and comparable circumstances. All these persons acquire higher education, and in all cases it is funded by the state.

The contested norms envisage differential treatment by setting the obligation to the person to work after completing the residency studies at least for three years in a definite institution of medical treatment, as well as the obligation to the person to repay the state budget resources used for his or her training, if the person fails to meet this obligation. Such an obligation and, hence, restrictions to rights, has not been set for others, whose studies are paid for by the state budget resources. After completing their studies they are free to choose their workplace and no repayment of the state budget resources used for studies is demanded, if they choose to work in private sector and even outside the Republic of Latvia, nor if they fail to master the study program or discontinue studies for reasons independent of the institution of higher education.

The application notes: by imposing the obligation to work in definite institutions of medical treatment the state attempts to ensure accessibility of health care to people throughout Latvia. Thus, the contested norms have a legitimate aim – to ensure other persons' rights to health protection. However, the Applicant is unable to discern the legitimate aim of the differential treatment. The differential treatment has no objective and reasonable grounds, and the contested norms are incompatible with the first sentence of Article 91 of the Satversme.

3.2. The Applicant holds that the contested norms also restrict the person's rights guaranteed by the first sentence of Article 106 of the Satversme, since because of the contested norms he or she cannot, after completing the residency choose to work in any institution of medical treatment in Latvia or outside Latvia. The first sentence of Article 106 of the Satversme guarantees the right not only to choose freely the employment, but also the workplace. The person has the right to decide freely upon discontinuing the respective employment and leaving the workplace.

It is noted in the Application that Article 116 of the Satversme allows restricting the rights envisaged by Article 106. The contested norms are not defined clearly enough, as the maximum time that the residents should work in the defined institutions of medical treatment has not been set. Therefore this regulation does not allow the person prior to concluding the agreement to anticipate for how long time exactly he or she will have to work in a definite institution of medical treatment after completing the studies. If the time is too long, it can be the cause to recognise that the person is subject to forced labour.

Likewise, the contested norms do not clearly define, what should be considered the costs that the person has to repay, if after completing the residency he or she refuses to work at a definite institution of medical treatment. Therefore the person has been deprived of the possibility to forecast the repayable sum. Thus, the contested norms cannot be recognised as a law adopted in due procedure, which can be the basis for restricting fundamental rights.

The Applicant holds that the contested norms have a legitimate aim – to ensure a sufficient number of doctors in Latvia, however, the restriction set out by the contested norms is not proportional.

First, it can be doubted, whether this regulation ensures reaching the legitimate aim. Regulation like this can help to solve the problem of insufficient number of doctors only in short-term. Secondly, it is not the least restrictive measure. Doctors could be attracted to concrete workplaces by other means – ensuring competitive remuneration, providing various support and guarantees (for example, providing to the doctor's family an apartment in the concrete place, guaranteeing a place in the kindergarten to the doctor's child, etc.). These means could ensure result in the long-term, as the doctor, upon leaving the concrete workplace, would lose the respective support. Thus, the doctor could be interested in keeping this workplace.

Thus, the restriction prescribed by the contested norms is not proportional and the contested norms are incompatible with the first sentence of Article 106 of the Satversme.

4. The institution, which adopted the contested act – the Cabinet of Ministers – does not uphold the Applicant’s opinion and asks the Constitutional Court to recognise the contested norms as being compatible with Article 91 and Article 106 of the Satversme.

It is noted in the written reply that the contested norms, in fact, envisage terms (commitments), to be included in agreements with persons, whose residency training is funded from the state budget resources. The subject of these commitments is the obligation to work for a certain period of time in definite institutions of medical treatment. Pursuant to the contested norms the commitments are funded upon mutual agreement, by concluding a public law agreement. The Cabinet of Ministers notes: if the person disagrees to the terms set by the state, it is possible to study in residency by covering it with one’s own resources, without any kind of commitments towards the state.

4.1. The Cabinet of Ministers holds that the contested norms comply with Article 91 of the Satversme. It is noted in the written reply that examining the compliance of the contested norms with Article 91 of the Satversme, Article 112 of the Satversme, which envisages right to education, should also be taken into consideration. It is the duty of the state to ensure the possibility to acquire basic and secondary education free of charge, however, the acquisition of higher education or post-diploma professional studies (residency) are funded from the state budget, if ensuring the respective specialists is important for society and specialists are prepared in order to provide services needed by society.

In fact, residency education is more comparable to employee training or professional continuous education; as the students are persons, who have already acquired doctor’s education and during the residency acquire the necessary practical work experience.

The written reply states that the procedure for acquiring the education and the right to practice is unique, comprising both professional studies at the institution of higher education (acquiring the diploma) and practical training (residency), as well as the procedure of certification. This process cannot be compared to the process of

acquiring any other education. Moreover, the costs of practical training are much higher than the costs of theoretical studies. Thus, the Cabinet of Ministers holds that residents are not in comparable and similar circumstances with other students.

4.2. As regards the compliance of the contested norms with the first sentence of Article 106 of the Satversme, the Cabinet of Ministers notes that, essentially, they do not restrict a person's right to choose employment and workplace freely, according to his or her abilities and qualification. Moreover, if a person, who has completed residency studies, is unwilling to meet the commitments envisaged in the agreement, the only legal consequences that this person incurs is the obligation to compensate to the state the resources from the state budget spent for the training, but no penal fees are applied, nor any other adverse consequences set it. Therefore the inclusion of such conditions in the agreements to be concluded with the persons enrolled in residency studies cannot be compared to forced labour, as these contracts are concluded on voluntary basis.

The Cabinet of Ministers, analysing the compliance of the contested norms with the principle of proportionality, admits that the contested norms are not the only means for reaching the aim – to ensure the health care services needed by society, however, this measure ensures significant effect. The posting of doctors according to regional need ensures equivalent access to health care services in different regions and prevents excessive concentration of doctors in Riga region.

The Cabinet of Ministers notes that the contested norms should be recognised as law adopted in due procedure. The contested norms envisage terms to be included in the public law agreement to be concluded with the resident, thus, elements of contractual relationships are set out on the level of a regulatory enactment. Broader interpretation of the wording “permanent employment for a period of at least three years” would contradict the principle of respecting the rights of a private person.

The Cabinet of Ministers also notes: even though Regulation No. 120 did not clearly enumerate the costs to be considered as expenditure linked with the residency studies, Para 11 of this Regulation clearly states that, if the conditions referred to in this paragraph set in, all expenditure related to residency training are to be repaid. The resident is receiving remuneration for residency studies (performing job duties), and repayment of it is not required.

Thus, the Cabinet of Ministers holds that the contested norms are sufficiently understandable and the legal consequences following from them sufficiently predictable, so that an individual, if necessary, seeking appropriate advice, can regulate his or her actions.

4.3. In the additional explanations the Cabinet of Ministers notes that Regulation No. 120 and Regulation No. 972 were issued on the basis of Section 57 of Medical Treatment Law. The aim set in these Regulations complies with the authorisation set by the law and are to be considered as regulations adopted according to the procedure of public administration.

The Cabinet of Ministers holds that the concept “funding” is comprehensive and does not mean only “granting of” financial resources. Referring to Section 1(1) and Section 2(2) of the law On Budget and Financial Management, the Cabinet of Ministers draws the attention to the fact that the concept “procedure of funding residency education” not only includes the allocation of state budget resources, but also envisages mechanisms, which are needed for control and responsibility for the use of allocated state budget resources and reaching the aims linked with it, inter alia, also reaching such an aim as attracting junior specialists to work in state and local-government medical treatment institutions according to regional needs. If the resident does not comply with his or her contractual commitments, the collection of the state budget resources invested is admissible. The funding of residency studies must reach a concrete aim set by the state, for example, the aim of the programme “Development of Human Resources in Health Care, 2006 -2015”, approved with the Order of 6 November 2006 by the Cabinet of Ministers No. 870, is to ensure human resources and their development in health care sector in the long-term.

5. The summoned person – the Saeima Social and Employment Matters Committee (hereinafter – the Saeima Committee) – notes that it submitted the draft Medical Treatment Law. The proposal to include in the draft Medical Treatment Law the norm on the procedure for posting residents and funding residency education was submitted by the Member of the Saeima A.Požarnovs, who at the time was the President of Latvian Physicians’ Association, before the third reading. The Saeima supported this proposal at the sitting of 20 March 1997. The wording of Section 57 of Medical Treatment Law has not changed since 14 June 2000, when law “Amendments to Medical Treatment Law” of 1 June 2000 came into force.

The Saeima Committee notes that the minutes of its meetings and the transcripts of the Saeima sittings do not reflect the discussions concerning the aforementioned proposal submitted by A.Požarnovs, therefore the issue of the posting of residents and funding residency studies was examined during the Saeima Committee meeting of 23 November 2011, arriving at the conclusion that the purpose and scope of the delegation included in Medical Treatment Law should be examined systemically in the context of the whole law, inter alia, with the aim defined in Section 2 – to regulate public relationships in medical treatment in order to ensure qualified prophylaxis and diagnosis of diseases or injury, as well as qualified medical treatment and rehabilitation of patients. To reach the aim of Medical Treatment Law, the Cabinet of Ministers had the right to issue relevant regulations, posting of doctors in accordance with the regional needs and thus promoting equal accessibility of health care services to inhabitants of Latvia.

Thus, the Saeima Committee holds that the Cabinet of Ministers, adopting the contested norms, has not exceeded the delegation included in Section 57 of Medical Treatment Law.

6. The summoned person – the Ministry of Health – holds that the contested norms comply with Article 91 and Article 106 of the Satversme.

The Ministry of Health notes that the posting envisaged in Regulation No. 120 and Regulation No. 972 prevented lack of doctors in concrete specialities, because doctors were posted to work in regions, on the basis of requests made by the concrete region. The Ministry of Health informs that only few persons have repudiated the obligation to work for three years in a definite institution of medical treatment and agreed to repay the state budget resources spent for the training.

The Ministry of Health notes that there have been no cases when a person had been obliged to work longer than three years. Moreover, almost all specialists, who started to work in the appointed institution of medical treatment, continued to work there also after the expiry of the three-year term. The Ministry of Health holds that the principle of posting has justified itself.

Regulation No. 685, which replaced Regulation No. 972, contains regulation, which differs from the previous one, as regards organisation and funding of residency education, as well as improving the quality of the residency training process, broadening the competence of medical treatment institutions on residency training

and ensuring resident training in the potential workplaces in the regions. The new procedure provides possibilities to motivate junior specialists financially for working in the regions, ensuring the possibility of residential studies in regional multi-profile hospitals outside Riga, where the average monthly salary is at least 30 per cent higher than the one set in regulatory enactments. Thus, following the studies junior specialists will continue their professional activities in the respective region.

The Ministry of Health notes: the training of specialists is a lengthy and financially costly process, therefore the state, with the purpose of ensuring health care services to people, fund the training of doctors from the state budget resources, and in according to Regulation No. 685 envisages the reciprocal duty of the person to repay the state budget resources used for residency in the form of taxes.

The Ministry of Health informs that also other European Union member states implement certain measures to attract junior doctors to work in regions.

7. The summoned person – the Ministry of Justice – notes that it had provided opinion on draft Regulation No. 972, but no objections had been made against Para 11 thereof.

The Ministry of Justice holds that the prohibition of differential treatment included in Article 91 of the Satversme is not infringed, since the residents and other students are not in similar and comparable circumstances. The resident in an institution of medical treatment is, first of all, employee, and a student only after that. The students of medicine and students of other institutions of higher education are in similar and comparable circumstance only until the moment, when they have completed studies at the higher education institution and acquired a doctor's diploma.

The Ministry of Justice notes that a similar regulation is in force also in other sectors, for example, with regard to soldiers in professional military service. The contested norms do not collide with the European Union law.

The Ministry of Justice holds that it is a significant fact that the contested norms only regulate the terms to be include in the agreements with persons, whose residency training is funded from the state budget resources, however, do not envisage an obligation to conclude such an agreement. If a person disagrees with the terms of the agreement, he or she has the possibility to undertake residency studies and fund it themselves, without undertaking any commitments vis-à-vis the state.

The Ministry of Justice also notes: the Medical Treatment Law does not provide guidelines on funding residency education, therefore the legislator has granted to the Cabinet of Ministers discretion in selecting the model of funding, inter alia, deciding, whether the residency shall be fully, partially or according to certain conditions funded from the state budget. Taking into consideration the purpose of Medical Treatment Law, defined in Section 2 thereof, the Cabinet of Ministers was obliged to establish such a model for funding residency education that would ensure in the future qualified treatment and rehabilitation to patients, protecting every person's right to life and health. Moreover, it can be considered that the Saeima, by allocating funding for residency education in the law on state budget, every year indirectly approved of the procedure for funding residency, established by the Cabinet of Ministers. Therefore the Ministry of Justice holds that the delegation included in Section 57 of Medical Treatment Law has been implemented in accordance with the legislator's will.

8. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested norms comply with Article 91 and Article 106 of the Satversme.

The Ombudsman holds that the training of residents significantly differs from the study process of other students, funded by the state budget resources and that the separation of residents from other groups of students is well founded. The residents and others, whose studies are funded by the state budget resources, are in different and incomparable circumstances. The principle of equality allows and even demands differential treatment of persons, who are in different circumstances. Thus, the contested norms comply with the first sentence of Article 91 of the Satversme.

The Ombudsman, referring to Article 111 of the Satversme, notes that it is the duty of the state to ensure to people quality and comprehensive health-care. The restriction upon the residents' rights has been imposed with the aim to ensure health care of society. The Ombudsman expresses the opinion that the state, paying for the residents' training, can establish their obligation to work for the benefit of the state. Moreover, the persons before enrolling into residency studies, have the possibility to choose what kind of contractual obligations to assume – to pay for the residency studies using the resources of natural or legal persons or to receive residency education according to the state remit, covered by the state budget resources and after completing

the residency work for three years at definite institutions of medical treatment. The Ombudsman concludes: the restrictions set regarding the residents, whose residency training is paid for by the state budget resources, are proportional to the public benefit thus acquired. Therefore the contested norms comply with the first sentence of Article 106 of the Satversme.

9. The summoned person – Latvian Physicians Association (hereinafter – LPA) – holds that the contested norms do not reach legitimate aims, impose disproportional restrictions to junior doctors, are unfair as to the essence and, moreover, are not clearly defined.

LPA notes that the conditions laid down by the contested norms do not solve the problem of lack of employees, which is encountered outside Riga. This problem should be solved by offering to junior doctors adequate remuneration and social guarantees, as well as ensuring appropriate living conditions.

Likewise, LP notes that the contested norms contain different wording as regard to the sum to be repaid, if the person declines to meet its commitments.

LPA holds that the mandate granted by Medical Treatment Law to the Cabinet of Ministers to define the procedure for placing residents does not grant the right to impose obligations upon doctors, who have completed residency studies and obtained certification in a concrete speciality.

10. The summoned person – association “Latvian Association of Junior Doctors” (hereinafter – LAJD) – notes that the Cabinet of Ministers, in adopting new regulation in 2011, has assessed the previously existing procedure, established by the contested norms, as ineffective.

LAJD holds that doctors should be ensured such remuneration and living conditions, motivating junior specialists to move to regions. LAJD holds that the restrictions defined by the contested norms are not proportional to the public good thus obtained and the desirable aim – to ensure regions with specialists – is not reached.

LAJD notes that the state invests large resources in training residents. The average number of persons annually enrolled in residency studies is 120–170 persons, and in some specialities residency places funded by the state budget are not offered at all or the demand exceeds the supply. In such cases the interested persons have the

possibility to choose residency studies for a charge. The current system facilitates choice of residency studies for a charge, however, young people do not always have the financial means needed for study fees, and because of this junior doctors go abroad or choose a job in another profession (for example, sales of pharmaceutical products). LAJD holds that the contested norms are not defined clearly and that the differential treatment of residents is unfounded.

The Constitutional Court Establishes

11. The application contests two norms of Cabinet Regulations, which form a uniform regulation, and provides that:

1) with a person, who has been enrolled in residency studies and who has decided to use the state budget resources for studies, an agreement is concluded, envisaging that after completing the residency studies the person shall work for three years in a definite institution of medical treatment (Subparagraph 3.¹⁵ of Regulation No. 120);

2) if the person does not fulfil this obligation, he or she has to repay the state budget resources spent for training within five years (Para 11 of Regulation No. 120 and Para 11 of Regulation No. 972).

The Constitutional Court shall examine this regulation as a whole, not the compliance of each contested norm with legal norms of higher legal force.

12. Article 91 of the Satversme provides:

“All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

The application contains a request to examine the compliance of the contested norms with the first sentence of Article 91 of the Satversme. The Applicant holds that those residents, whose training costs are covered by state budget resources, and the students of any other institution of higher education, whose studies are funded by the state budget resources, are in similar and comparable circumstances. The application notes that all these persons acquire higher education and in all these cases it is funded by the state, however, the residents, in difference to others, have been imposed the obligation after completing the residency studies to work for three years in definite

institutions of medical treatment or to repay the state budget resources used for their training.

The Constitutional Court has indicated a number of times that the principle of equality forbids state institutions to adopt such norms, which without reasonable grounds allow differential treatment of persons, who are in similar and according to concrete criteria comparable circumstances. The principle of equality allows and even requires differential treatment of persons, who are in different circumstances, and also allows differential treatment of persons, who are in similar circumstances, if objective and reasonable grounds exist. The principle of equality must guarantee existence of uniform legal order. However, such uniformity of legal order does not mean levelling out, because equality allows differential treatment, if it can be justified in a democratic society (*see, for example, Judgement of 3 April 2011 by the Constitutional Court in Case No. 2000-07-0409, Para 1 of the Findings and of 14 September 2005 in Case No. 2005-02-0106, Para 9.1*).

To assess, whether the contested norms comply with the first sentence of Article 91 of the Satversme, the Constitutional Court must, first of all, verify, whether persons, who undertake residency studies, are in similar and according to concrete criteria comparable circumstances with other students, secondly, whether the contested norms envisage equal or differential treatment of these persons and, thirdly, whether such treatment has objective and reasonable grounds, i.e., whether it has legitimate aim and whether the principle of proportionality has been abided by (*see Judgement of 10 June 2011 by the Constitutional Court in Case No. 2010-69-01, Para 10*).

13. The profession of a doctor is one of the most strictly regulated in the health care sector in Latvia. Therefore the regulatory enactments set corresponding professional qualification requirements

13.1. Pursuant to Section 10 (1) of “Law on the Regulated Professions and the Recognition of Professional Qualifications”, a person, who has acquired the diploma of higher education (doctor’s degree) and has been included in the register of medical practitioners may engage in independent professional activities as a doctor in accordance with the competence defined by regulatory enactments.

However, in accordance with the provisions of this law and Medical Treatment Law, a doctor acquires the right to practice and can practice independently only after having completed residency studies in a concrete speciality, has passed a

certification exam and received a doctor's certificate in this speciality. Para 2 of the Cabinet of Ministers Regulation of 24 March 2009 No. 268 "Regulation on the competence in medical treatment of practitioners of medicine and the students, who follow the first or second level professional programs of higher medical education, and the scope of theoretical and practical knowledge of such persons" envisages that medical practitioners, who are acquiring basic speciality, sub-speciality or additional speciality (hereinafter – speciality), i.e., residents, perform professional activities in the respective speciality in accordance with the competence in medical treatment and patient care set out in this Regulation, as well in conformity with the scope of theoretical and practical knowledge of medical practitioners in the respective speciality and under direct supervision and guidance of certified medical practitioner of the respective speciality, who has the right to train.

13.2. Para 19 of Section 1 of Medical Treatment Law provides that residency is legal employment relations with a medical treatment institution implementing an education programme, for the education of an existing doctor in the acquisition in the official language of a speciality in accordance with an accredited professional residency programme in medicine.

Para 4 of Section 44(1) of Law on Institutions of Higher Education mentions residents in medicine as one of the groups of students studying at the institutions of higher education. However, the Constitutional Court concludes that the residency studies have several specific features compared to other study programs of higher education – academic or professional:

- 1) residency is post-diploma professional training for doctors, during which doctors, who have acquired higher medical education in the framework of basic studies, master speciality – theoretical knowledge and practical skills;
- 2) residents have legal employment relationship with the institution of medical treatment;
- 3) the training of residents requires significant resources from the state budget (*see Case Material, p. 37*).

Health care is a field of special importance for the state and society. Therefore correspondingly high requirements have been set for doctor's education. In other professions acquisition of practical skills is integrated in the programs of higher education or is manifested as continuous professional training measures, however,

doctors in addition to the aforementioned after completion of the basic study programme, have to study in residency, during which the theoretical knowledge and practical skills needed in the speciality are acquired and improved. Residency forms an important part of doctor's education, without it a person cannot acquire a doctor's certificate, i.e., the right to practice independently and in full scope. However, a person can work as a doctor also before completing residency – it is proven by the very essence of residency, i.e., the residents have legal employment relations with the institution of medical treatment.

Considering the peculiarities, purpose and significance of residency in doctor's profession, the Constitutional Court recognises that residents are not in similar and comparable circumstances with other students, therefore with regard to residents the principle of equality has not been infringed.

Hence, the contested norms comply with Article 91 of the Satversme.

14. Article 106 of the Satversme provides:

“Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour.”

The application contains a request to examine the compliance of the contested norms with the first sentence of Article 106 of the Satversme. The Applicant notes that the contested norms forbid persons after completing residency to choose workplace in Latvia or outside Latvia freely.

Until now the Constitutional Court has examined several times the compliance of contested legal norms with the first sentence of Article 106 of the Satversme, however, only in connection with education and qualification requirements set for a concrete type of occupation, not in connection with the right to choose workplace. The Constitutional Court has recognised that in the understanding of Article 106 of the Satversme the right to freely choose workplace and employment means, firstly, equal access to labour market to all persons and, secondly, that the state may not set other restricting criteria to persons, only requirements regarding their abilities and qualifications, without which the respective person would be unable to perform the job duties (*see Judgement of 20 May 2003 by the Constitutional Court in Case No. 2002-21-01, Para 1 of the Findings*).

15. Article 116 of the Satversme provides that the fundamental rights set by Article 106 of the Satversme may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

It follows from the contested norms that those persons, whose training in residency has been paid for by the state, have the obligation to work for three years after completion of residency in definite institutions of medical treatment or to repay the state budget resources used for their training. Thus, the contested norms define restrictions to persons' right to freely choose workplace. Therefore it must be examined, whether the restrictions to fundamental rights defined in Article 106 of the Satversme have been, first of all, defined by law, secondly, whether it has a legitimate aim and, thirdly, whether it complies with the principle of proportionality (*see Judgement of 20 May 2003 by the Constitutional Court in Case No. 2002-21-01, Para 2 of the Findings*).

16. The Constitutional Court has to ascertain, whether the restriction to a person's right has been established by a law adopted in due procedure or on the basis of it.

16.1. Regulation No. 120 and Regulation No. 972, which contain the contested norms, have been issued on the basis of Section 57 of Medical Treatment Law, which envisages that the procedure of posting of residents and funding residency shall be established by the Cabinet of Ministers. In the course of preparing the Case doubts were expressed, whether the contested norms had been issued in compliance with the authorisation granted to the Cabinet of Ministers by law. Therefore, the content and purpose of Section 57 of Medical Treatment Law must be identified, as well as, whether the Cabinet of Ministers has exceeded the scope of authorisation granted to it by the Saeima (*compare Judgement of 6 May 2011 in Case No. 2010-57-03, Para 13*).

The contested norms are predominantly connected to the authorisation, included in Section 57 of Medical Treatment Law, granted to the Cabinet of Ministers to establish the procedure for funding residency.

The Constitutional Court has recognised that the term "procedure" means the way of implementing a process and organisation of work, and basically grants to the

Cabinet of Ministers the right to regulate the procedural nature of the respective issue with Regulation, i.e., to work out definite procedure. A Cabinet regulation may not contain such norms of substantive law, which would create legal relationships significantly differing from the authorising law (*see Judgement of 9 October 2007 by the Constitutional Court in Case No. 2007-04-03, Para 20 and Judgement of 6 May 2011 in Case No. 2010-57-03, Para 13.3*).

The concept “funding”, in its turn, as the written reply by the Cabinet of Ministers validly points out, does not mean only the allocation of monetary resources, but includes also the aspects of controlling the use of such resources and responsibility. It follows from the definition of “financial management” provided in Section 2(1) of Law on Budget and Financial Management.

The Constitutional Court has concluded that as regards regulation of such significant issues in the life of the state and society, which need conceptual decisions and political discussions, decisions should be taken by the legislator itself. However, the requirement that the legislator should decide on all issues by legislating under the complex conditions of contemporary society has become difficult to implement. The reason for resigning from requirement that the legislator should decide on all issues itself is more effective implementation of state power, the legislator decides upon the most important issues in the process of legislation, but authorises the Cabinet of Ministers or another state institutions to work out more detailed legal provisions (*see Judgement of 9 October 2007 by the Constitutional Court in Case No. 2007-04-03, Para 15, Judgement of 21 December 2010 in Case No. 2010-44-01, Para 11 and Judgement of 11 January 2011 in Case No. 2010-40-03, Para 10 and Para 10.1*).

The Constitutional Court concludes that the Saeima has granted to the Cabinet of Ministers broad discretion to define the procedure for funding residency, inter alia, also the possibility to conclude agreements with persons regarding payment for the residency studies from the state budget resources, imposing an obligation to work for three years after completion of residency in definite institutions of medical treatment. The legal regulation envisaged by the contested norms does not create legal relationships differing from those relationships, which are created in the framework of Medical Treatment Law and in accordance with the aim defined in Section 2 thereof.

Moreover, even though it does not mean per se that the contested norms comply with legal norms with higher legal force, the opinion of the Saeima committee should be taken into consideration, namely, that the legislator holds that the Cabinet

of Ministers has issued the contested norms within the scope of authorisation granted to it (*see Case Materials, p. 146 and p. 153*). The Saeima's approval of the procedure for funding residency established by the Cabinet of Ministers is also proven by the fact that it has not changed the essence of the authorisation (*see Judgement of 11 January 2011 in Case No. 2010-40-03, Para 10.3*) and every year, adopting the state budget, has allocated funding for residency in the amount required by the Cabinet of Ministers.

Hence, the Cabinet of Ministers, in issuing the contested norms, has abided by the authorisation granted by the Saeima.

16.2. The Constitutional Court has noted that the legal norm, which restricts a person's fundamental rights, must be defined with sufficient clarity, so that an individual, in case of necessity – seeking appropriate advice, could plan his or her actions. Moreover, the norm should be defined in such a way that would allow persons to anticipate clearly the field of its application and meaning (*see Judgement of 11 May 2011 by the Constitutional Court in Case No. 2010-55-0106, Para 13.1*).

The application, inter alia, notes that the contested norms are unclear.

The Applicant objects to the wording used in Para 3.¹⁵ of Regulation 120, “for a period of at least three years” with regard to the period, which the person after having completed the residency has to work in a definite institution of medical treatment.

Section 5 of Administrative Procedure Law provides that in administrative proceedings institutions and courts, within the scope of the applicable norms of the law, facilitate the protection of the rights and legal interests of private persons. Hence, an institution or administrative court should construe the contested norm in the way that the person must work in a definite institution of medical treatment no more and no less than three years. I.e., it follows from the verbal meaning of the norm that this period should be at least three years, but the principle of protecting the rights of private persons precludes setting in the agreement a period exceeding three years.

It follows from case materials that institutions have interpreted Subparagraph 3.¹⁵ of Regulation 120 exactly in this way. The information provided by the Ministry of Health about the practice of applying this norms shows that the persons, who have completed residency, have never been made to work in definite institutions of medical treatment for longer than three years (*see Case Materials, p. 68*). Para 5.2. of the agreement concluded on 9 September 2003 by J. Vasiļjeva and SACHI provides that

J. Vasiļjeva undertakes “after completing the residency to work for three years being permanently employed in an institution of medical treatment in accordance with the posting made by the Ministry of Health of the Republic of Latvia (*see Case Materials, p.6*). Moreover, it follows from the J.Vasiļjeva’s application of 25 May 2011 to the Administrative District Court that she did not doubt that she would have to work in the definite institution of medical treatment for three years (*see Case Materials, p. 20*). Thus, there are no grounds to doubt the period that persons have to work in definite institutions of medical treatment after they have completed residency.

The Applicant, likewise notes, that the contested norms do not indicate clearly the expenditure, which the person has to repay, if after having completed residency he or she decides not to work in a definite institution of medical treatment. The Cabinet of Ministers holds that it follows clearly from the contested norms that a person has to repay all costs related to his or her training, except the remuneration paid to the resident.

Para 11 of Regulation No. 120 uses the wording “has to cover the expenses linked with the residency”. Regulation No. 972, in its turn, uses two wordings: Subparagraph 5.4.2 – “shall cover the residency related costs”, but Para 11 “shall adopt a decision on repayment of the state budget resources used for the training of this resident”. The Constitutional Court concluded that the wordings used are not contradictory and a person, in case of necessity seeking appropriate advice, can understand that in case, if after having completed residency, he or she refuses to work in a definite institution of medical treatment, he or she will have to repay all state budget resources used for training in residency, even if the agreement does not envisage a concrete sum.

Para 7 of the agreement concluded by J.Vasiļjeva and SACHI on 9 September 2003 stipulates a concrete sum, which has been used for residency training in 2003, but Para 8 of the agreement envisages that the agency has the right to change the amount of costs connected to the training of the resident in accordance with the annual law “On the State Budget” (*see Case Materials, p. 6*). The Constitutional Court notes that the dispute about which expenditure can be considered as having been invested into training and the amount, in which these should be repaid, is to be solved by the administrative court. Thus, the contested norms are sufficiently clear for a person to understand the obligations, which follow from them, and plan his or her actions accordingly.

Thus, the restriction to fundamental rights, which follows from the contested norms, has been established on the basis of law.

17. The Cabinet of Ministers holds that the contested norms have the legitimate aim to ensure health care services needed by society throughout the state.

17.1. The program “Development of Human Resources in Health Care, 2006-2015”, approved by the Order of 6 November 2006 by the Cabinet of Ministers No. 870, concluded that insufficient number of medical practitioners and their uneven placement decreases the accessibility of health care services to people in many regions of Latvia and that in more distant rural regions health care services provided by doctors are less accessible to inhabitants (*accessible: phoebe.v.m.gov.lv/misc_db/web.nsf/bf25ab0f47ba5dd785256499006b15a4/29c6909e8fc629c7c225731500298472/\$FILE/VMprog_kops_130606.pdf, accessed on 3 April 2011*).

The initial impact assessment report (annotation) on the draft regulation of 24 August 2010 “Amendments to Regulation of 25 August 2009 by the Cabinet of Ministers No. 972 “Regulation on Posting of Residents and Funding Residency”” explains: “This procedure has been established so that the State would be able to ensure to all inhabitants the right to health care enshrined in the Satversme. The State implements the aforementioned right by funding the residency training of a definite number of doctors in specialities, needed to ensure the provision of health care services paid for by the state, and by placing the junior specialist to work in an institution of medical treatment, which needs a doctor of the respective speciality, thus ensuring accessibility of health care services paid for by the state throughout the territory of the Republic of Latvia” (*accessible http://www.mk.gov.lv/lv/mk/tap/?pid=40185104&mode=mk&date=2010-08-24, accessed on 3 April 2012*).

17.2. The Constitutional Court has noted several times: “The Satversme is a united whole, and the legal norms it contains are closely interrelated. Each norm of the Satversme has a definite place in the constitutional system [...] To establish more comprehensively and objectively the content of separate norms of the Satversme, they must be interpreted in interconnection with other norms of the Satversme [...]. The principle of unity of Satversme prohibits interpreting an individual constitutional norm in isolation from other norms of the Satversme, since the Satversme as a

uniform document influences the scope and content of each norm” (*Judgement of 18 October 2007 by the Constitutional Court in Case No. 2007-03-01, Para 30*).

The legitimate aim of the contested norms noted by the Cabinet of Ministers follows from the constitutional obligation of the State set in Article 111 of the Satversme and from the rights of the person and society, which, in their turn, follow from this obligation of the State. The Constitutional Court has recognised that pursuant to Article 111 of the Satversme the state has the obligation to ensure the existence and accessibility of health care institutions and services (*see Judgement of 29 December 2008 in Case No. 2008-37-03, Para 11.2*). The doctrine also notes that the first part of the sentence establishing this constitutional norm contains both protection of public health as a collective form of health protections, as well as the protection of a concrete person’s health as an individual value to be protected, but the second part of the sentence includes a person’s individual right to receive the minima; medical assistance (*see: Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskajā vadībā. Rīga: Latvijas Vēstnesis, 2011, 612.–613. lpp.*).

17.3. Pursuant to Article 112 of the Satversme the State must ensure the possibility to everyone to acquire primary and secondary education without charge, however, it does not envisage the right to a person to require that higher education is ensured without charge (*see. Judgement of 6 May 2011 by the Constitutional Court in Case No. 2010-57-03, Para 11.2*).

Even though the obligation of the state to ensure post-diploma training without charge to persons, who have already acquired higher education, does not follow from Article 112 of the Satversme, the State, in view of its obligation set out in Article 111 of the Satversme, offers to part of the persons enrolled in residency training for state budget resources. I.e., since the state has the duty to ensure to inhabitants in all its regions the possibility to receive various health care services, it must also take care of the possibilities to acquire medical education and qualification.

17.4. Section 3(1) of Medical Treatment Law provides that health is physical, mental and social well-being, the natural basis of the existence and survival of the State and the nation, but health care is the complex of measures for ensuring, maintaining and restoring health.

Thus, the legitimate aim of the contested norms is the protection of other persons’ rights and the welfare of society. The Constitutional Court holds that

individual and public health is a value, which has undeniable role in ensuring public welfare, moreover, in its tangible and intangible meaning. In this case the tangible aspects of welfare, including various measures aimed at increasing the total material public benefit, as well as intangible aspects of welfare, which the society needs to function as harmoniously as possible (*see Judgement of 2 May 2007 by the Constitutional Court in Case No. 2006-30-03, Para 15*).

The need to use financial resources at the disposal of the state as efficiently and rationally as possible can also be understood as the aim to protect public welfare. The Constitutional Court has admitted that the state has the obligation to balance the public welfare with its economic possibilities. I.e., the state has to establish such legal regulation, which is targeted at its sustainable development, as the result of which the legal interests of individual persons are harmonised with public interests (*see Judgement of 15 March 2010 by the Constitutional Court in Case No. 2009-44-01, Para 22*). Thus, the Cabinet of Ministers has the right to establish regulation envisaging a way to recover the state budget resources invested into the training of a person, if this person does not fulfil the commitments vis-à-vis the state that he or she has undertaken.

Thus, the contested norms have two legitimate purposes – protecting the rights of other persons and public welfare.

18. In examining the proportionality of restriction to the fundamental rights the Constitutional Court first of all verifies, whether the chosen means are appropriate for reaching the legitimate purpose or whether the chosen measure allows reaching the legitimate aim; secondly, whether such actions are necessary or whether the legitimate aim cannot be reached with means that are less restrictive to individual's rights; thirdly, whether the restriction is adequate or whether the public good gained exceeds the damage inflicted upon the individual's rights (*see, for example, Judgement of 16 May 2007 by the Constitutional Court in Case No. 2006-42-01, Para 11*).

18.1. The information provided by the Ministry of Health shows that during the recent years only few persons among those medical practitioners, whose residency studies were paid for by the state budget resources, have refused to work in the defined institutions of medical training and agreed to repay the state budget resources used for training. Moreover, almost all medical practitioners, whose training in

residency was paid by the state budget resources and who after completion of the residency agreed to work for three years in definite institutions of medical treatment, after the expiry of this period continue working in the same institutions. Namely, of those medical practitioners, whose three-year period expired in 2009, 92.5 per cent continued working in the previous workplace, in 2010 – 98 per cent, but in 2011 – 93 per cent (*see Case Materials, p. 68*).

Thus, the measure chosen by the Cabinet of Ministers, i.e., the contested norms, allows reaching the legitimate aim – ensuring the health care services needed by society throughout the territory of the state, thus safeguarding other persons' rights and public welfare.

However, if the persons after having completed the residency refuse to meet the commitments that he or she undertook and to work for three years in a definite institutions of medical treatment, then the measures envisaged by the contested norms are appropriate for the state to recover the resources invested into the training of this person.

Thus, the measures envisaged by the contested norms are appropriate for reaching the legitimate aims.

18.2. The Applicant, similarly to LPA and LAJD, holds that the legitimate aim could be reached by measures less restrictive to an individual's rights, by ensuring competitive remuneration to doctors, various support measures and guarantees.

The Constitutional Court agrees that there are also other possibilities for the state to ensure accessibility of health care services to its inhabitants. However, in this case it must be taken into consideration that the legitimate aim of the contested norms is not only ensuring health care to inhabitants, but also protecting public welfare or ensuring efficient and rational use of state budget resources. The Constitutional Court has not found affirmation that the measures, less restrictive to an individual's rights, indicated by the Applicant, would allow reaching this legitimate aim, i.e., recovery of the state budget resources invested into the residency training of a person, if this person after completion of the residency decides not to meet the obligation envisaged in the agreement, to work for three years in a definite institution of medical treatment. If the state were to ensure to doctors, as they hold, competitive salaries, living and working conditions, this would not always motivate them to choose jobs in the health care system outside Riga or even in Latvia.

Thus, it is impossible to reach the legitimate aims in the same quality with less restrictive means.

18.3. Assessing, whether the benefit gained by society exceeds the damage inflicted upon an individual's rights, the Constitutional Court concludes that the persons are granted sufficient discretion.

Firstly, in accordance with Regulation No. 120 and Regulation No. 972, a person can choose the resources to be used for residency studies. The Constitutional Court emphasizes that the regulatory enactments do not prescribe an obligation for the person, but only the right to conclude an agreement that the person's training in residency are to be paid from the state budget resources. The person may pay for his or her training in residency himself or herself or to attract the means of other natural or legal persons, without undertaking the obligation to work after completion of the residency for three years in a definite institution of medical treatment or to repay the state budget resources used for this training.

Secondly, if the person has chosen the residency studies paid for from the state budget, then after completing the residency the person is given an opportunity to choose, in which of several institutions of medical treatment to work for the next three years.

Thirdly, if the person wishes to work in another institution of medical treatment in Latvia or to leave Latvia, he or she has the possibility to repay the state budget resources. Moreover, these resources must not be repaid immediately in full, but within five years, breaking up the total sum into monthly instalments and without paying penalty fees.

The persons, who have been enrolled in residency and who, by freely expressing their will, choose to conclude an agreement on paying for the training from the state budget resources, simultaneously undertake certain commitments vis-à-vis the state. Concluding this public law agreement is mutually beneficial – on the one hand, the state undertakes to pay for a person's training in residency, but the person, on the other hand, undertakes to work for three years after having completed residency in the health care system. Thus, in this case the designation "damage infringed upon an individual's rights" can be used only conditionally. The state has the right to demand that the persons meet the commitments they have undertaken. The public good gained from this restriction imposed upon a person's rights is the possibility to receive the health care services guaranteed with Article 111 of the

Satversme or recovery of the state budget resources invested into the training of the person.

Thus, the public benefit is greater than the restriction to person's fundamental rights included in the contested norm, to word it differently, this restriction is proportional.

19. Regulation No. 120 and Regulation No. 972 have become invalid, thus the requirement that persons who have completed residency should work for three years in definite institutions of medical treatment applies only to those persons, who started training in residency prior Regulation No. 685 came into force.

The Ministry of Health notes that the introduction of the principle “money follows the resident” and provision of larger monthly salaries to residents in regional hospitals motivate junior doctors to choose their workplace in an institution of medical treatment outside Riga already during the residency period and to continue working there after completing the residency (*see Case Materials, p.70*). Regulation No. 685 envisage more flexible regulation as regards a person's possibilities to choose a workplace after completing the residency, i.e., the person, whose training in residency has been funded by the state budget resources, after completing the residency training at least 36 calendar months within the period of five years has to earn income in the Republic of Latvia and pay income tax from salary or income from business activities. However, Regulation No. 685 has retained the provision that the person must repay state budget resources used for his or her training in residency, if he or she does not fulfil the concluded agreement or discontinues studies in residency.

The Constitutional Court does not uphold the opinion that the Cabinet of Ministers by adopting new regulation on posting of residents and the procedure for funding residency has deemed the previous regulation ineffective. The Cabinet of Ministers, within the authorisation granted to it by the Saeima, may choose a solution appropriate for the concrete situation.

The Substantive Part

Under Sections 30 – 32 of the Constitutional Court Law, the Constitutional Court

h o l d s :

to recognise Subparagraph 3.¹ 5 and Section 11 of 13 March 2001 Cabinet of Ministers Regulation No. 120 "Regulation on Posting of Residents and Funding of Residency" and Section 11 of 25 August 2009 Cabinet of Ministers Regulation No. 972 "Regulation on Posting of Residents and Funding of Residency " as compatible with Article 91 and Article 106 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement enters into force as of the day of its publication.

The Presiding Judge

G. Kūtris